

**CHAPTER NO. 1070**

**HOUSE BILL NO. 2409**

**By Representative Buck**

**Substituted for: Senate Bill No. 2971**

**By Senator Gilbert**

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 33, Part 2, relative to the seizure and forfeiture of certain property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-33-204, is amended by deleting from the first sentence of subsection (a) the language "judge who is authorized to issue a search warrant" and substituting instead the language "general sessions, circuit or criminal court judge".

SECTION 2. Tennessee Code Annotated, Section 40-33-204, is further amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) The officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. The hearing on the application for a forfeiture warrant shall be ex parte and shall be recorded. It shall be the duty of the court to maintain such recording. Certified copies of the proceeding shall be made available to any party requesting such, and the same shall be admissible as evidence. The affidavit in support of a forfeiture warrant shall be sworn to and state the following:

(1) The legal and factual basis making such property subject to forfeiture;

(2) If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of title, registrations or other recorded documents, the affidavit shall state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal and factual basis for forfeiture of such interest; and

(3) If the interest of a secured party with a duly perfected security interest as reflected in the public records of title, registration or other recorded documents, is sought to be forfeited, the affidavit shall state with particular specificity the officer's probable cause that the secured party's interest in such property is nevertheless subject to forfeiture as well as the legal and factual basis for forfeiture of such interest.

(c) General Sessions Judges may authorize Magistrates or Judicial Commissioners to issue forfeiture warrants. Prior to such authorization, such Judges shall train and certify that the Magistrates or Judicial Commissioners

understand the procedure and requirements relative to the issuance of a forfeiture warrant.

SECTION 3. Tennessee Code Annotated, Section 40-33-204, is amended by deleting subsection (e) in its entirety, substituting instead the following, and relettering present subsection (f) as subsection (h):

(e) If the owner or co-owner of the property was not the person in possession of the property at the time of the seizure and can be determined from public records of title, registrations or other recorded documents, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture;

(2) What is the officer's probable cause that the co-owner(s) who are not in possession of the property at the time it was seized were co-conspirators to the activity making the property subject to forfeiture; and

(3) Any other questions necessary to determine the legal and factual basis for forfeiture.

(f) If a secured party's interest is sought to be forfeited, the judge shall put the seizing officer under oath and ask the following questions:

(1) What is the officer's probable cause that the secured party is a co-conspirator to the activity making the property subject to forfeiture;

(2) Did the secured party at the time the interest attached, have actual knowledge of the intended illegal use of the property; and

(3) Any other question deemed necessary to determine the legal and factual basis for forfeiture of such secured party's interest.

(g) Upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency. By signing and issuing the forfeiture warrant, the judge is affirming that he or she made the required finding of probable cause necessary to issue the warrant. Upon receipt of such documents, the applicable agency shall notify any other owner, as may be determined from public records of titles, registration or other recorded documents, or secured party that a forfeiture warrant has been issued. Upon receipt of the notice of seizure and forfeiture warrant and after interviewing any witnesses, the applicable agency shall release such property if there is no legal and factual basis for forfeiture. The seizing agency shall maintain a copy of the notice of seizure for all property seized at its main office and such notices and receipts shall be public records.

SECTION 4. Tennessee Code Annotated, Title 40, Chapter 33, Part 2, is amended by adding the following as a new section:

Section 40-33-215.

(a) A person who has property seized in accordance with the provisions of this part shall have a cause of action against the seizing agency if the seizing officer acted in bad faith in seizing or failing to return property seized pursuant to this part.

(b) A person who prevails in an action against a seizing agency pursuant to this section shall be entitled to:

(1) Reasonable attorney fees and court costs necessarily incurred in seeking the return of the seized property and in bringing the action pursuant to this section; and

(2) Monetary damages resulting from the improper seizure of the property.

Monetary damages recoverable under this section shall be limited to the rental value of property similar to that which was seized for the period of time it was seized but in no event shall such damages exceed the value of the seized property.

(c) For the purposes of this section, a seizing officer "acts in bad faith" when the officer acts intentionally, dishonestly, or willfully and/or such officer's actions have no reasonable basis in law or fact in regards to the seizure or failure to return the property seized.

(d) A copy of any suit filed pursuant to the provisions of this section shall be forwarded to the Court of Judiciary.

SECTION 5. This act shall take effect on October 1, 1998, the public welfare requiring it.

PASSED: May 1, 1998

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 19<sup>th</sup> day of May 1998

  
DON SUNDQUIST, GOVERNOR